IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

Crl.Rev.Pet.No. 4233 of 2006()

CRA.611/2004 of III ADDL. SESSIONS COURT (ADHOC)
FAST TRACK COURT NO. I, THRISSUR
CC.421/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD

.....

REVN. PETITIONER: APPELLANT/ACCUSED

ALIEMUNNI @ ALI, S/O.PUTHIYAVEETTIL
CHALIL KUNHAMUNNI, VATANAPPILLY AMSOM DESOM,
CHAVAKKAD TALUK.

BY ADV. SRI.U.O.JOSE

RESPONDENTS: COMPLAINANT AND STATE

---

1. VELUNNY MASTER, S/O.MACHARAMBATH
APPUKUTTAN, KUNDALIYOOR DESOM,
ENGANDIYOOR AMSOM, CHAVAKKAD TALUK.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 06/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J

Crl. R.P. No.4233 of 2006

Dated this the 6th day of December, 2006

ORDER

The petitioner is the accused in C.C. 421/2002 on the file of the court of Judicial Magistrate of First Class, Chavakkad. The complaint was filed by the first respondent alleging offence under Section 138 of the Negotiable Instruments Act. The trial court found the accused guilty for the offence and he was sentenced to undergo simple imprisonment for a period of six months and to pay compensation of Rs.1,00,000/- to the complainant and in default of payment of compensation to undergo simple imprisonment for six months. The petitioner appealed against the conviction and sentence. The appellate court dismissed the appeal and the conviction and sentence were confirmed.

2. The case of the complainant is that on 12.2.2001, the accused borrowed a sum of Rs.1,00,000/- from the complainant and in discharge of that liability, the accused issued Ext.P1 cheque dated 12.5.2001. The cheque was presented by the

complainant, but it was dishonoured on the ground of 'insufficiency of funds' in the account of the accused. Though, Ext.P4 notice was issued to the accused, he did not repay the amount nor did he send a reply.

3. The complainant adduced evidence as PW1. A suggestion was made in the cross-examination of PW1 that his wife had filed a complaint before the Chief Judicial Magistrate Court, Thrissur against the wife of the accused and the complainant admitted that it is true. He stated that it was in respect of a transaction for Rs.2,00,000/- between the wife of the complainant and the wife of the accused. It is also stated that the said transaction is closed. The evidence of PW1 would disclose that the complainant and the accused had good relationship with each other. Yet another suggestion made to PW1 is that a signed blank cheque was given by the accused when money was borrowed from the complainant's wife. This was denied by PW1. However, no evidence was adduced by the accused to probablise this suggestion. Nothing has been brought out in the evidence of PW1 to improbablise the transaction as put forward by him or to probablise the case

suggested by the accused. The trial court, in my view rightly, had drawn the presumption under Section 139 of the Negotiable Instruments Act in favour of the complainant and held that the accused did not adduce any evidence to rebut the presumption under Section 139 of the Act. Due execution of Ext. P1 cheque was proved in the case and it is also proved that Ext.P1 cheque is supported by consideration. The appellate court also considered the oral and documentary evidence in the case and held that there was no ground for interference in appeal.

4. There is no illegality, irregularity, impropriety or error in the judgments of the courts below and the conviction imposed by the courts below, warranting interference in revision under Section 397 of the Code of Criminal Procedure.

5. The learned counsel for the petitioner submitted that the sentence of imprisonment for six months is highly excessive and that in view of the decision in Anilkumar Vs. Shummy (2002 (3) KLT 852), the sentence may be reduced to imprisonment till the rising of the court.

6. I am inclined to accept this submission. Accordingly, the sentence is modified and reduced to imprisonment till the

rising of the court. The direction to pay compensation and the default sentence shall stand confirmed.

In the result, this Crl.R.P. is allowed in part. The conviction is confirmed. However, the sentence is reduced to imprisonment till the rising of the court. The direction to pay the compensation amount is confirmed. However, taking into account the facts and circumstances of the case and the submission made by the learned counsel for the petitioner, three months' time is granted to the petitioner to deposit the compensation amount. Execution of the default sentence in respect of the compensation amount shall be kept in abeyance for a period of three months.

K.T.SANKARAN,
JUDGE

csl